

Commodity Futures Trading Commission

§ 32.3

application shall be deemed withdrawn without prejudice and shall be returned to the applicant.

(Secs. 5, 5a, 8a(5) and 19 of the Commodity Exchange Act (7 U.S.C. 7, 7a, 12, 12a(5), and 23), sec. 26 of the Futures Trading Act of 1982 (7 U.S.C. 16a), Independent Offices Appropriation Act of 1952, as amended by Pub. L. 97-258, 96 Stat. 1051 (Sept. 13, 1982))

[49 FR 25835, June 25, 1984, as amended at 52 FR 22635, June 15, 1987; 60 FR 49335, Sept. 25, 1995]

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

Sec.

32.1 Scope.

32.2 Commodity option transactions; general authorization.

32.3 Trade options.

32.4 Fraud in connection with commodity option transactions.

32.5 Option transactions entered into prior to the effective date of this part.

APPENDIX A TO 17 CFR PART 32

AUTHORITY: 7 U.S.C. 1a, 2, 6c, and 12a, unless otherwise noted.

SOURCE: 77 FR 25338, Apr. 27, 2012, unless otherwise noted.

§ 32.1 Scope.

The provisions of this part shall apply to all commodity option transactions, except for commodity option transactions on a contract of sale of a commodity for future delivery conducted or executed on or subject to the rules of either a designated contract market or a foreign board of trade.

§ 32.2 Commodity option transactions; general authorization.

Subject to §§ 32.1, 32.4, and 32.5, which shall in any event apply to all commodity option transactions, it shall be unlawful for any person or group of persons to offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to any transaction in interstate commerce that is a commodity option transaction, unless:

(a) Such transaction is conducted in compliance with and subject to the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, or

(b) Such transaction is conducted pursuant to § 32.3.

§ 32.3 Trade options.

(a) Subject to paragraphs (b), (c), and (d) of this section, the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap shall not apply to, and any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a commodity option transaction, *Provided that*:

(1) Such commodity option transaction must be offered by a person that has a reasonable basis to believe that the transaction is offered to an offeree as described in paragraph (a)(2) of this section. In addition, the offeror must be either:

(i) An eligible contract participant, as defined in section 1a(18) of the Act, as further jointly defined or interpreted by the Commission and the Securities and Exchange Commission or expanded by the Commission pursuant to section 1a(18)(C) of the Act; or

(ii) A producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeror is offering or entering into the commodity option transaction solely for purposes related to its business as such;

(2) The offeree must be a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeree is offered or entering into the commodity option transaction solely for purposes related to its business as such; and

(3) The commodity option must be intended to be physically settled, so that, if exercised, the option would result in the sale of an exempt or agricultural commodity for immediate or deferred shipment or delivery.

(b) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, every counterparty shall comply

with the swap data recordkeeping requirements of part 45 of this chapter, as otherwise applicable to any swap transaction, and shall:

(1) Comply with the swap data reporting requirements of part 45 of this chapter to the extent that the commodity option involves at least one counterparty (whether as offeror or offeree) that has—

(i) Become obligated to comply with the reporting requirements of part 45,

(ii) As a reporting party,

(iii) During the twelve month period preceding the date on which the trade option is entered into,

(iv) In connection with any non-trade option swap trading activity; or

(2) For any counterparty that enters into one or more commodity options pursuant to § 32.3(a) in a calendar year that do not involve a counterparty described in paragraph (b)(1) of this section, file with the Commission by March 1 of the following year an “Annual Notice Filing for Counterparties to Unreported Trade Options” on Form TO, as set forth in appendix A to this part, to be completed and submitted in accordance with the instructions thereto and as further directed by the Commission.

(c) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, the following provisions shall apply to every trade option counterparty to the same extent that such provisions would apply to such person in connection with any other swap:

(1) Part 20 (Swaps Large Trader Reporting) of this chapter;

(2) Part 151 (Position Limits) of this chapter;

(3) Subpart J of part 23 (Duties of Swap Dealers and Major Swap Participants) of this chapter;

(4) Sections 23.200, 23.201, 23.203, and 23.204 of subpart F of part 23 (Reporting and Recordkeeping Requirements for Swap Dealers and Major Swap Participants) of this chapter; and

(5) Section 4s(e) of the Act (Capital and Margin Requirements for Swap Dealers and Major Swap Participants).

(d) In addition, any person or group of persons offering to enter into, entering into, confirming the execution of,

maintaining a position in, or otherwise conducting activity related to a commodity option transaction in interstate commerce pursuant to paragraph (a) of this section shall remain subject to part 180 (Prohibition Against Manipulation) and § 23.410 (Prohibition on Fraud, Manipulation, and other Abusive Practices) of this chapter and the antifraud, anti-manipulation, and enforcement provisions of CEA sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, and 13.

(e) The Commission may, by order, upon written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provisions of this part, and the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, other than § 32.4, part 180 (Prohibition Against Manipulation), and § 23.410 (Prohibition on Fraud, Manipulation, and other Abusive Practices) of this chapter, and the antifraud, anti-manipulation, and enforcement provisions of CEA sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, 13, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

§ 32.4 Fraud in connection with commodity option transactions.

In or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, it shall be unlawful for any person directly or indirectly:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) To deceive or attempt to deceive any other person by any means whatsoever.

Commodity Futures Trading Commission

§ 32.5

§ 32.5 Option transactions entered into prior to the effective date of this part. activities that occurred prior to the effective date of this part.

Nothing contained in this part shall be construed to affect any lawful ac-

APPENDIX A TO 17 CFR PART 32

CFTC FORM TO**Annual Notice Filing for Counterparties to Unreported Trade Options⁸⁸**

NOTICE: Failure to file a report required by the Commodity Exchange Act (“CEA” or the “Act”)⁸⁹ and the regulations thereunder,⁹⁰ or the filing of a report with the Commodity Futures Trading Commission (“CFTC” or “Commission”) that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of section 6(c)(2) of the Act (7 USC 9, 15), section 9(a)(3) of the Act (7 USC 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 USC 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission’s authority for soliciting this information is granted in sections 4c(b) and 8 of the CEA and related regulations (see, e.g., 17 CFR § 32.3(b)). The information solicited from entities and individuals engaged in activities covered by the CEA is required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions (see, e.g., 7 U.S.C. §§ 9 and 13a-1, and/or 18 U.S.C. 1001). The information requested is most commonly used in the Commission’s market and trade practice surveillance activities to provide information concerning the size and composition of the commodity derivatives markets. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public on an aggregate basis in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with, the CFTC System of Records Notices, available on www.cftc.gov.⁹¹

⁸⁸ A trade option is generally a commodity option purchased by a commercial party that, upon exercise, results in the sale of a physical commodity for immediate (spot) or deferred (forward) shipment or delivery. See CFTC regulation 32.3(a) (17 CFR 32.3(a)) for more details. An unreported trade option is a trade option that is not required to be reported to a swap data repository by either counterparty pursuant to CFTC regulation 32.3(b)(1) and part 45 of the Commission’s regulations (17 CFR 32.3(b)(1); 17 CFR part 45).

⁸⁹ 7 U.S.C. section 1, *et seq.*

⁹⁰ Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq.*

⁹¹ Note that, under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget.

GENERAL INSTRUCTIONS

Who Must File a Form TO – 17 CFR § 32.3(b)(2) requires every counterparty to an unreported trade option to submit an annual filing to the Commission for the purpose of providing notice that it has entered into one or more unreported trade options in the prior calendar year. As noted above, an unreported trade option is a trade option that is not required to be reported to a swap data repository by either counterparty pursuant to CFTC regulation 32.3(b)(1) and part 45 of the Commission's regulations.

When to file – Form TO is an annual filing requirement due to the Commission no later than March 1 for the prior calendar year. For example, if a market participant enters into one or more unreported trade options between January 1, 2013 and December 31, 2013, the market participant must submit a completed Form TO to the Commission on or before March 1, 2014.

Where to file – Generally, Form TO should be submitted via the CFTC's web based Form TO submission process at <http://www.cftc.gov/>, or as otherwise instructed by the Commission or its designee. If submission through the web-based Form TO is impossible, the reporting counterparty shall contact the Commission at [techsupport@cftc.gov] or 202-418-5000 for further instructions.

What to File – All reporting counterparties filing a Form TO must complete all questions.

Signature – Each Form TO submitted to the Commission must be signed or otherwise authenticated by either (1) the reporting counterparty submitting the form or (2) an individual that is duly authorized by the reporting counterparty to provide the information and representations contained in the form.

CFTC FORM TO**Name and Contact Information for Reporting Counterparty:**

1. Reporting Counterparty

Name and Address (including City, State, Country, Zip/Postal Code):

Reporting Counterparty website (if any):

Reporting Counterparty Unique Identifier (if any):

<input type="checkbox"/> Legal Entity Identifier "LEI" (if any)	
<input type="checkbox"/> National Futures Association ID Number (if any)	
<input type="checkbox"/> Other Party Identifier (Please Specify)	

2. Reporting Counterparty Contact Person⁹²

Name and Job Title and/or Relationship with Reporting Counterparty:

Phone Number and Email Address:

Commodity Category Indication:

3. In the prior calendar year, the Reporting Counterparty entered into one or more unreported trade options in the following commodity categories:

Agricultural ⁹³	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Metals ⁹⁴	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Energy ⁹⁵	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Other (Please Specify)	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO

Approximate Size of Unreported Trade Options Exercised in the Prior Calendar Year:4. Please indicate, by commodity category, the approximate total value (quantity received/delivered multiplied by price paid/received) of physical commodities that the reporting counterparty purchased and/or delivered in connection with the exercise of unreported trade options in the prior calendar year:⁹⁶

⁹² This should be an individual able to answer specific questions about the reporting counterparty's unreported trade options activity if contacted by Commission staff.⁹³ Agricultural commodity is defined in the Commission's regulations at 17 CFR 1.3(zz).⁹⁴ Including, but not limited to, gold, silver, platinum, palladium, copper, aluminum, and rare earth metals.⁹⁵ Including, but not limited to, petroleum products, natural gas, and electricity.⁹⁶ For the purposes of answering this question, a reporting counterparty should not include the value of commodities that were the subject of trade options that remained open at the end of the prior calendar year or any trade options that expired unexercised during the prior calendar year.

Commodity Futures Trading Commission

§ 33.1

5.

Agricultural	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M
Metals	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M
Energy	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M
Other	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M

Signature/Authentication, Name, and Date

☐ By checking this box and submitting this Form TO (or by clicking “submit,” “send,” or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by the reporting counterparty identified below to provide the information and representations submitted on this Form TO, and that the information and representations are true and correct.

Reporting Counterparty Authorized Representative (Name and Position):

_____ (Name)

_____ (Position)

Submitted on behalf of:

_____ (Reporting Counterparty)

Date of Submission:

PART 33—REGULATION OF COM-MODITY OPTION TRANSACTIONS THAT ARE OPTIONS ON CON-TRACTS OF SALE OF A COM-MODITY FOR FUTURE DELIVERY

Sec.

33.1 Definitions.

33.2 Applicability of Act and rules; scope of part 33.

33.3 Unlawful commodity option trans-actions.

33.4 Designation as a contract market for the trading of commodity options.

33.5 Application for designation as a con-tract market for the trading of com-modity options.

33.6 Suspension or revocation of designation as a contract market for the trading of commodity options.

33.7 Disclosure.

33.8 Promotional material.

33.9 Unlawful activities.

33.10 Fraud in connection with commodity option transactions.

33.11 Exemptions.

AUTHORITY: 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a-1, 13b, 19, and 21, otherwise noted.

SOURCE: 46 FR 54529, Nov. 3, 1981, unless otherwise noted.

§ 33.1 Definitions.

As used in this part:

(a) *Purchase price* means the total amount paid or to be paid, directly or indirectly, by a person to acquire a commodity option.